

PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
BATTURE, LLC
FOR
LAKEVIEW CITY PARK DRAINAGE IMPROVEMENTS

RFQ NO. 500C-02545

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is made by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Batture, LLC, represented by Robert Mora, Managing Partner (the “**Consultant**”). The City and the Consultant are sometimes each referred to as a “**Party**,” and collectively as the “**Parties**.” This Agreement is effective as of the date of full execution (the “**Effective Date**”).

RECITALS

WHEREAS, on May 16, 2019, the City issued Request for Qualifications No. 500C-02545 seeking qualified persons to provide professional design and construction administration services for the FEMA HMGP-eligible project site of Lakeview City Park (the “**RFQ**”) (area bounded by Orleans Canal, Wisner Blvd, Robert E. Lee Blvd, and City Park Drive, in City Park of New Orleans), as shown in Exhibit “A” (the “**Project Boundary**”); and

WHEREAS, the Consultant submitted a project proposal dated June 17, 2019, and the City has selected the Consultant to perform the professional services described in the RFQ;

NOW THEREFORE, the City and the Consultant, for good and valuable consideration, agree as follows:

ARTICLE I -- THE CONSULTANT'S OBLIGATIONS

A. SCOPE OF SERVICES.

The Consultant shall provide professional design services for FEMA HMGP-eligible project site within the Project Boundary and shall perform each of the services and provide all deliverables as set forth in this Article and elsewhere in this Agreement (collectively, the “**Services**”).

Plans and specifications for the project site may include the following design features: large retention/detention basins, street basins, streetside bioswales, public art features, streetscapes, green alleyways, and upgraded grey infrastructure. Core boring information shall be incorporated in the design. Plans must be prepared using AutoCAD compatible with the City. The Consultant shall also submit to the Project Delivery Unit (the “**Department**” or “**PDU**”) all designs, computations, original reproducible drawings, printed originals of all specifications and proposal documents as required, and the final drawings on electronic format compatible with the City’s software systems at the discretion of the City. All plans must be signed and stamped by a Louisiana

Registered Landscape Architect or Civil Engineer of the Consultant's team, who shall be responsible for the design.

The Consultant shall contact each applicable utility and obtain information regarding the location of their utilities. This information, as provided, shall be shown on the Plan/Profile drawings. The Consultant shall contact the Sewerage and Water Board of New Orleans ("SWB") as notification to take elevations of its gravity facilities and regarding the location of its pressure facilities. This information, as provided, will be shown on the Plan/Profile drawings. The Consultant shall coordinate with adjacent projects as pertinent, coordinate schedules, and report the efforts to the City's authorized representative biweekly. This information shall be shown on the Plan/Profile drawings. The Consultant shall obtain verification from the utilities of the locations named above.

The Consultant shall report observed conflicts to the Department for coordination.

The Consultant shall, in a timely manner, contact the Department of Parks and Parkways relative to horticultural requirements, such as a tree trimming, root pruning, hand work for curbing and walks near trees, etc., as required for construction, and resolve any conflicts prior to completion of final plans.

The Consultant shall provide the Department with the services required for preparation of preliminary design plans, final plans, specifications, and bid documents. These services include topographic and right-of-way surveys (as needed), scoping, conceptual, and schematic design (to include benefit-cost analysis support), preliminary plans, computations used to develop design, participation in the plan-in-hand conference, a preliminary estimate of a construction contract cost based on estimated quantities developed from the preliminary plans, and a final estimate of construction contract cost based on estimated quantities developed from the final plans.

Meetings with the City shall be scheduled as required to solicit input on project progress and upcoming issues or concerns. Consultant shall prepare and deliver a record of decisions and action items to the City for each meeting.

The Consultant shall prepare and submit complete detailed construction contract specifications and bid documents along with a revised construction cost estimate of the project to the Department.

Except for data to be furnished by the City as specifically provided by this Agreement, the Consultant shall obtain data and furnish services and materials required to develop and complete the plans, specifications, and bid proposals through the contract plan stages, including work beyond the limits of the project that may be necessary to make proper connections to the project.

In addition, the Consultant shall obtain data and furnish services required during the construction stage, maintain records necessary during the construction stage, observe construction for general compliance with plans and specifications, and prepare partial and final payment to the Construction Consultant for the Department's approval. If directed by the Department, the Consultant will establish suitable roadway and flow line elevations and grades. Attendance by the Consultant or its representatives at legal hearings and appearances in court are to be furnished by the Consultant at established rates to the extent of the funds available.

The Consultant shall attend up to three (3) public meetings, as required. The Consultant shall provide digital copies of displays appropriate for public meetings and shall provide a meeting summary following each meeting. The Consultant shall attend coordination meetings with the Department and other stakeholders. The Consultant shall provide relevant project information to

support conduct of these coordination meetings and provide a meeting summary following each meeting, as directed. The costs of these services are included in the lump sum fee specified hereunder.

The Consultant is responsible for the relevance and accuracy of items and details included in the plans, specifications, or other contractual documents prepared by the Consultant. The Department will review and approve such documents only for general conformance to the Scope of Project. It is understood that the preparation of preliminary and final plans, specifications, bid documents, and estimates required of the Consultant under this Agreement will meet the standard requirements of the City as to general format and content and shall be performed according to the standard of care. The Consultant shall correct all errors and omissions in the plans and specifications, including those discovered subsequent to the acceptance by the Department, without additional compensation.

The services to be performed by the Consultant are divided into five (5) phases of work identified in general as follows and more fully described below:

- Phase I(a). Survey (as needed)
- Phase I(b). Scoping
- Phase II. Environmental Study (if requested)
- Phase III. Preliminary Design
- Phase IV. Final Design
- Phase V(a). Construction Administration
- Phase V(b). Resident Inspection (if requested)

PHASE I(a). SURVEY (AS NEEDED)

The Consultant shall review the programming documents and Hydrologic and Hydraulic (H&H) study provided by the Department to determine the scope of any additional surveying required.

The Consultant shall conduct surveys during this phase that shall consist of, but not be limited to, the following: a topographic survey within the required area of the project: in transverse direction a distance of fifty (50) feet from the right-of-way line or to the nearest catch basin, whichever is furthest; in longitudinal direction a distance of fifty (50) feet beyond the right-of-way line of bounding streets. The survey documents shall be prepared using NAVD88 Datum in accordance with the City of New Orleans, Department of Public Works, General Guide for Design, Survey and Preparation of Plans and Specifications, latest edition. The topographic survey shall include all visible surface objects including trees, power poles, manholes, water meters, etc. The temporary bench marks must be located such as they will not be destroyed during construction. The base lines shall be referenced to apparent property lines. The base line plot shall be submitted to the Department for approval.

The Consultant shall acquire all information on existing and proposed utilities within the limits of the project through field surveys and from contacts with the various utility companies so as to reasonably avoid any conflicts in the design or construction of the project.

All surveying must be performed and certified by a qualified surveyor, licensed to practice land surveying in the State of Louisiana.

PHASE I(b). SCOPING

The Consultant shall develop a conceptual plan and cost estimates for the project, to include general design criteria outlining the potential enhancement elements in the area impacted by the project and conduct an ecosystem services analysis to support the City's FEMA benefit cost analysis and confirm that the project meets FEMA HMGP eligibility requirements.

Based on the project scope and schematic design, the Consultant will recommend the appropriate level and type of environmental studies to the City as required to provide all documentation necessary for a Categorical Exclusion (CE) or other approval and other related documents in accordance with the National Environmental Policy Act (NEPA), as amended, and applicable FEMA regulations and guidelines as part of the Scoping Report submitted to the City.

The Consultant shall develop a Project Scope Report based on the results of the survey, H&H study, and the programming documents provided by the Department and present this to the Department for approval at the time of submittal of the topographic survey. This Project Scope Report shall include an analysis of the cost, expected benefits, and anticipated drainage system and ecosystem impacts, recommended environmental review, cost-benefit, and life-cycle operational and maintenance costs.

Upon approval of the Project Scope Report and completion of the survey work, the Consultant shall submit to the Department: five (5) sets, full size 24-inches by 36-inches hard copies and electronic files of the topographic and right-of-way survey work. Drawings should be considered 30% design stage.

It is the Consultant's responsibility during Phase I(b) to develop a project scope that meets the benefit-cost ratio requirement (at least 1:1 ratio) for a viable FEMA HMGP project as outlined in 44 CFR 2006.434(b)(5). If this is not achieved, the Consultant may not be given authorization to proceed with further design work. Upon obligation of full funding for the project by FEMA, the contract and fee will be amended to reflect actual scope of services, including additional services.

Phase I Deliverables:

1. Applicable Survey Information for the schematic design, including actual survey or LiDAR.
2. FEMA HMGP Project Scope Report for City approval, including Benefit Cost Analysis and conceptual H&H analysis.
3. 30% (schematic) design documents

PHASE II. ENVIRONMENTAL STUDY

If requested, the Consultant will be required to perform services required to provide the documentation necessary for a Categorical Exclusion (CE) and other related documents in accordance with the National Environmental Policy Act (NEPA), as amended.

PHASE III. PRELIMINARY DESIGN

Prior to, during, and subsequent to the commencement of this phase, a monthly design conference will be held between the Consultant with key members of their Integrated Design Team and the Department, relevant City authorities, and the SWB in order to clarify any aspect of the proposed work. The plans provided three days in advance of each meeting shall consist of a title sheet, typical sections, special details, plan and profile drawings, cross sections, design calculations, and preliminary summary sheets. Limits of the work shall be shown on the title sheet. Drawings should be considered 60% design stage by the culmination of this Phase.

The Consultant shall prepare a Preliminary Design Report that shall document design decisions per City and SWB standards and guidance, computations and modeling outcomes used in developing the design, agreed program and project partners (including financial and operations and maintenance, as relevant), updated opinion of probable cost, updated Benefit Cost Analysis, updated H&H analysis, summary table of comments from Scoping Phase Design Review and responses to comments, and updated schedule for public engagement, design, and construction.

The Consultant shall provide the City with five (5) sets, full size 24-inches by 36-inches hard copies and electronic files of preliminary plans, together with four (4) copies of the Preliminary Design Report. Upon receipt of comments, if any, the Consultant shall revise the plans accordingly until the preliminary plans are acceptable to the Department. The Consultant shall then submit to the City one (1) full size 24-inches by 36-inches set of reproducible plans, stamped and dated "60% design" for making a complete plan-in-hand review with representatives of the Department, utility companies, and others, at a time and date mutually agreed to in advance. Phase III shall be considered complete after the plan-in-hand office and field review have been made, and the comments from same have been received by the Consultant. A listing of plan-in-hand comments, additions, and deletions shall be compiled by the Consultant for inclusion in final document. A preliminary construction cost estimate, based on estimated quantities developed from the preliminary plans, shall be submitted with the preliminary plans.

Phase III Deliverables:

1. Pre-Design Meeting Notes.
2. Preliminary Plans and Preliminary Design Report (60%).
3. Accepted Plans (reproducible) stamped "60% design."
4. Final Preliminary Design Report to include any revisions and a summary of the plan-in-hand comments to be included in the Final plans.

PHASE IV. FINAL DESIGN

This phase shall consist of professional design services required for the preparation of complete final construction plans, specification, bid documents, and construction cost estimate. These shall meet the standard requirements of the Department's general format and content. Specifically, the work under this phase consists of the following, without limitation:

- After the plan-in-hand inspection, the Consultant shall make such changes as necessary to reflect agreements reached at this stage and when authorized in writing by the Department, prepare final plans. The Consultant shall then submit four (4) sets of revised full size 24-inches by 36-inches hard copies and electronic files to the Department. These shall be stamped "Advance Check."

- A listing of plan-in hand comments, additions, and deletions compiled by the Consultant shall be incorporated into the Finalized Design Report, along with design decisions, final computations, updated construction cost estimate, based on finalized quantities developed from the “Advance Check” plans, and updated schedule.
- The Consultant shall prepare detailed construction contract specifications and bid documents for the project and submit four (4) sets, along with the “Advance Check” prints, to the Department for review. A revised construction cost estimate shall be submitted at this time. Specifications, contract documents, and the construction cost estimate shall be submitted in both hard copy and electronic format using computer software compatible with that used by the City of New Orleans for specifications, contract documents, and cost estimates.
- Upon receipt of the Department’s comments pertaining to plans and specifications, the Consultant shall revise and complete the final contract plans and specifications.

The bid proposal form shall include a summary of all documents required to be submitted with the bid or at some specified time after receipt of bids.

Upon completion and acceptance of final plans and specifications, the Consultant shall submit the original reproducible and printed originals of all specifications and proposal documents to be reproduced by the Department for bids. Final plans and bid documents shall be in electronic format compatible with the Department’s CAD and software systems.

The Consultant shall submit a construction cost estimate based on the final contract plans with its plans and proposals.

All plans shall be signed and stamped by a Louisiana Registered Architect, Civil Engineer, and/or Landscape Architect and member of the Consultant’s team responsible for each design discipline. If the Department proceeds with bidding the project, the Consultant shall attend the pre-bid and preconstruction conferences and be prepared to address any questions regarding the design work. The Consultant shall assist the City with preparing addenda and responses to bidder’s questions.

The Consultant shall attend bid openings, prepare bid tabulation sheets and check documentation submitted with bids for completeness. The Consultant shall submit the bid tabulation and award recommendation letter to the City within two (2) working days of the bid opening. The award recommendation letter shall report on completeness and technical correctness of the bids received.

Phase IV Deliverables:

1. “Advance Check” plans and Specifications.
2. Finalized Design Report with design decisions, final computations, updated construction cost estimate, based on finalized quantities developed from the “Advance Check” plans, and updated schedule.
3. Final Plans, Specifications, Computations, and Construction Contract Cost Estimate.
4. Bid Proposal Package.
5. Bid Opening Meeting Minutes.
6. Addenda, Questions and Answer Responses.
7. Award Letter Recommendation Letter.

8. Modeling outputs as needed to update DPW's Drainage Master Plan.
9. Public education materials.

PHASE V(a). CONSTRUCTION ADMINISTRATION

During construction, the Consultant shall, among other things:

- Attend pre-construction meeting and prepare meeting agenda and minutes.
- Review and track material submittals, approve, or take other appropriate action, for shop drawings and samples which the Consultant is required to submit (as warranted).
- Obtain and document pre-construction video (if required).
- Review and track Consultant Requests for Information ("RFIs"), and respond as necessary.
- Coordinate with PDU Project Manager and provide necessary documentation for FEMA HMGP eligibility determinations for field additions and previously unforeseen changes in scope/cost arising during construction.
- Assist with technical issues arising during construction.
- Attend progress meetings.
- Perform site visits periodically at intervals appropriate to various stages of construction.
- Recommend work be rejected while in progress if observed conditions are not in general conformance with contract documents and design concept.
- Issue necessary interpretations and clarifications of the contract documents and specifications as appropriate (field orders).
- Evaluate and coordinate with City regarding acceptability of substitute or "or-equal" materials and equipment proposed by the Consultant.
- Review quantities and pay applications for Consultant invoicing and recommend payment.

A Louisiana Registered Architect, Civil Engineer, and/or Landscape Architect shall be in charge of the Services. Such personnel shall be qualified for their assignments and shall be approved by the City.

All documents submitted to the City must be signed by the Consultant's Louisiana Registered Architect, Civil Engineer, and/or Landscape Architect assigned to be in charge of the Services

All reports shall be submitted within the time period specified by the City.

The Consultant shall, in a timely manner, advise the Sewerage & Water Board of any observed drainage, sewer, and water damages so that such facilities may be properly inspected.

The Consultant shall observe the progress of the project as required, with particular emphasis on the requirements of the General and Special Specifications relative to the timely review of submittals, shop drawings and samples, value engineering proposals, and evaluation of substitute materials.

The Consultant shall, in a timely manner, notify the City, through the Director of the Project Delivery Unit or the Director's Authorized Representative of observed problems which may impact the project's cost or construction time.

The Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. These duties and responsibilities are exclusively the Construction Consultant's obligation. The Consultant will not be responsible or have control or charge over the acts or omissions of the Construction Consultant, SubConsultants, or any agents, employees, or any other persons performing any of the work.

The Department will have the authority to reject work based on the Consultant's recommendations which does not conform to the Construction Documents. The Department and the Consultant may require special inspections for testing of the work at any stage of preparation or completion.

The Consultant will not authorize or direct the Construction Consultant to deviate from the plans and specifications without written authorization from the City, through its Director of the Project Delivery Unit or the Director's Authorized Representative. The Consultant is not responsible for any costs incurred as a result of delays incurred in obtaining written authorization by the Department for necessary or desired changes in the plans and/or specifications.

The Consultant shall submit all required documentation and process plan changes in a timely manner.

The Consultant shall submit to the Director or the Director's Authorized Representative for written approval within two (2) working days after signature by the Construction Consultant, any plan change which increases the project's cost or time required prior to the work being authorized. Should the Consultant approve a plan change, which increases the project's cost or time required, without prior written approval by the Director or the Director's Authorized Representative, the Consultant shall be liable for the increased cost. Department personnel (designee) authorized to approve such plan changes shall include the Director, Chief Engineer of Design and/or Construction, and Project Manager assigned to the project.

The Consultant shall observe on site all pay items of work, quantities completed, and prepare partial and final requests for payment on City's forms for work satisfactorily completed by the Construction Consultant in the Consultant's professional opinion and to the best of their knowledge, information, and belief. Quantities shall be derived from the plans unless otherwise directed.

The Consultant shall prepare the Construction Consultant's monthly pay request within five (5) work days after the end of the reporting period. The preparation of the Construction Consultant's monthly pay request consists of coordinating with the Construction Consultant on quantities in place and submitting to the Department completed pay request form "STS 651" (signed by the Construction Consultant and the Consultant) and form "E-14 Weather and Working Day Report" (signed by the Construction Consultant and the Consultant). Quantities and costs for non-FEMA eligible items shall be invoiced separately.

The Construction Consultant's invoice is to be submitted directly to the Consultant. The Construction Consultant's monthly pay request: forms STS 651 and "E-14 Weather and Working Day Report" shall be submitted for payment within five (5) working days after the Construction

Consultant has submitted the signed the invoice. Project diary and weekly progress reports shall be submitted within five (5) working days after the end of the reporting period.

In addition to the above services, the Consultant shall coordinate the activities of the testing laboratory designated by the Department to ensure that all materials entering the project, and the performance of the constructed features, are in accordance with the Project Construction Documents (plans and specifications) and FEMA HMGP and/or the State's requirements.

The Consultant shall review all testing reports as submitted by the testing laboratory and shall report to the Department if any of the work or material is not in conformance with the project's Construction Documents based upon test results. The Consultant shall review reports prepared by the testing laboratory for general compliance with the contract documents. The Consultant shall review and make recommendation for approval of pay requests for the testing laboratory for consistency with the testing performed.

When notified by the Construction Consultant that, in its opinion, all items of work required by the Contract have been completed, the Consultant shall make a final inspection of the Work, including any tests of operation. After completion of this inspection, the Consultant shall, if all things are satisfactory to it, recommend acceptance of the project to the Director, shall prepare an overrun/underrun statement, and establish the need, if necessary, to impose liquidated damages on the Construction Consultant.

The Consultant shall conduct the one (1) year warranty inspection and provide the Department with a detailed report with photographs depicting all observed deficiencies and listing corrective actions for which the Construction Consultant is responsible.

The Consultant shall participate in the final inspection of the Work.

Upon completion of this Agreement, the Consultant shall submit "As Built" drawings of the project in hard copy and in electronic format compatible with the Department's CAD and software systems.

Phase V(a) Deliverables:

1. Construction Field Records.
2. Monthly Pay Requests, Schedule Updates and Weather Reports.
3. Plan Change Requests.
4. Non-Conforming Materials Notifications.
5. Recommendation for Approval of Testing Laboratory Pay Request.
6. Record Drawings.
7. Final Inspection Report.
8. Overrun/Underrun Statement.
9. Warranty Inspection Report.

The Consultant shall also submit the following general project deliverables as required by this Agreement:

1. Project Schedule.

2. Monthly Progress Report and Invoice.

PHASE V(b). RESIDENT INSPECTION

If requested by the City, the Consultant will provide Resident Inspection services that may include, but may not be limited to:

- Observing construction at all times the Consultant is working on critical work items;
- Reviewing, measuring and appropriately tracking (eligible) work completed for pay requests and providing this information to the CA;
- Reporting any work that adversely affects utilities, adjacent areas and/or property, etc.
- Preparing daily field reports and/or field books;
- Photographing and/or documenting work progress;
- Documenting and coordinating with Consultant, the Construction Consultant and the City for unforeseen items encountered during construction;
- Coordinating with and monitoring work performed by material testing agency, utilities, and other on-site visitors as required;
- Preparing memorandums or documentation required for field changes;
- Verifying Consultant follows traffic control and site safety procedures; and
- Preparing incident reports.

The Consultant shall provide field construction staff who shall be on the project site at all times when construction work is being performed. Such personnel shall be qualified for their assignments and shall be approved by the Department.

During construction, the Consultant shall maintain all construction field records normally maintained by the Department. Entries shall be made daily in the project diary to indicate the Consultant's personnel on the project, as well as, the forces of the Construction Consultant, the Construction Consultant's equipment, and the work performed.

The Consultant shall observe at regular and frequent intervals the progress of the project, with particular emphasis on the requirements of the General and Special Specifications relative to the timely rejection of all nonconforming work and materials, the applications of the work forces to particular portions of the work, the conformance of the work to the Construction Consultant's schedule, the timely prosecution of the work and perform any required interviews of the Construction Consultant.

The Consultant shall document all pay items of work and quantities completed. Quantities shall be derived from the plans unless otherwise directed.

The Consultant shall forward the Construction Consultant's monthly updated schedule of work with the partial payment requests and weather reports. All documents submitted to the Department must be signed by the Consultant's Louisiana Registered Architect, Civil Engineer, or Landscape Architect assigned to be in charge of Phase V(a) Services.

All reports shall be submitted within the time period specified by the Department.

The Consultant shall, in a timely manner, notify the Department of observed problems which may impact the project's cost or construction time.

The Consultant shall review all testing reports as submitted by the testing laboratory and shall report to the Department if any of the work or material is not in conformance with the project's Construction Documents based upon test results.

The Consultant shall cooperate with the City and any other Consultants providing services to the City as needed.

ARTICLE II – REPRESENTATIONS AND WARRANTIES

A. STANDARD OF CARE: The Consultant represents that it has the requisite skills and expertise necessary to perform the Services. Accordingly, the Consultant is obligated to perform such services with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in which the Consultant is engaged in providing similar services in areas under the same or similar circumstances. The Consultant acknowledges and agrees that, at the City's option, the Consultant shall be obligated to re-perform, at no additional cost to the City, any or all of the Services that fail to satisfy the foregoing standard of care.

B. NON – SOLICITATION STATEMENT: The Consultant swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Consultant has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement

C. CONVICTED FELON STATEMENT: The Consultant swears that it complies with City Code §2-8 (c). No Consultant principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

D. AUDIT AND OTHER OVERSIGHT: It is agreed that the Consultant will abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which requires the Consultant to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Agreement. In signing this Agreement, the Consultant agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

E. CONFLICT OF INTEREST: To ensure that the Consultant's efforts do not conflict with the City's interests, and in recognition of the Consultant's obligations to the City, the Consultant will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Consultant will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Consultant's performance of this Agreement. The City will make the final determination whether the Consultant may accept the

other employment.

F. EMPLOYEE VERIFICATION: The Consultant swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all sub-Consultants to submit to the Consultant a sworn affidavit verifying compliance with items (i) and (ii) above. The Consultant acknowledges and agrees that any violation of the provisions of this paragraph may subject this Agreement to cancellation, and may further result in the Consultant being ineligible for any public contract for a period of three years from the date the violation is discovered. The Consultant further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the cancellation of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Consultant agrees to provide to the City a sworn affidavit attesting to the above provisions if requested by the City to do so; failure to provide such affidavit upon request shall give the City the option to cancel this Agreement.

G. COMPLIANCE WITH CITY'S HIRING REQUIREMENTS – BAN THE BOX: The Consultant agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Consultant must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Consultant notice of noncompliance and allow the Consultant thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Consultant remains noncompliant, the City may move to suspend payments to the Consultant, void the Agreement, or take any such legal action permitted by law or this Agreement. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect. The Engineer will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subConsultants to comply with those provisions.

ARTICLE III -THE CITY'S OBLIGATIONS

The City will:

1. Provide administration of this Agreement through the Project Delivery Unit;

2. Provide the Consultant records deemed necessary for the performance of the Services by the Consultant, including:
 - a. A copy of the H&H model and report of the project site; and
 - b. Survey files associated with the project site.
3. Provide access to personnel to discuss the scope of services during normal working hours, as requested by the Consultant;
4. Provide a standard title sheet and any other standard plans and details that may be relevant for use on the project; and
5. Make payments to the Consultant monthly based upon the Consultant's certified invoices, except as otherwise authorized by this Agreement or by law. The City's payment obligation is subject to the Consultant's satisfactory performance of the services and conditions required by this Agreement, including, without limitation, the submission of satisfactory deliverables, progress schedules, invoices, and evidence of necessary insurance.

ARTICLE IV - SCHEDULE

A. In general. Time is of the essence in completing each phase of work required by this Agreement.

Within two (2) weeks of receiving authorization to proceed with the Services, the Consultant shall prepare and submit to the Department for approval a progress schedule for each phase of the work (I(a), I(b), II, III, IV, V(a)) detailing the items of work to be performed in each phase, the length of time (in weeks and days) for completion of each item of work running from the City's Notice to Proceed for each phase, and other data pertinent to each schedule. This schedule shall be arranged so the actual progress can be shown as the items of work are accomplished.

The City shall have the right to approve or require changes to any part or the entire proposed schedule. The Consultant shall update this schedule monthly with progress details for each item of work and shall submit the updated schedule with any invoice. Any modifications to the schedule must be approved by the City in writing.

The Consultant will begin each work only upon the City's approval of the proposed schedule and the issuance of a notice to proceed. A revised schedule may be required, including without limitation after each phase of work is completed or with any approved plan change. For any slippage from the approved schedule, the Consultant shall submit a descriptive narrative to the Department for consideration and approval of any modification to the schedule.

The City may assess the Consultant \$1,500.00 per calendar day for each phase that is not completed by the deadline in the approved schedule, without further notice to the Consultant, to the extent the delay is caused solely by the Consultant. The City may deduct this amount from payments due to the Consultant for services rendered under this Agreement up to a maximum amount for each phase equivalent to 25% of the total fee for that phase of work.

B. Delays and Credits. By a written request to the Director, the Consultant may seek an extension of time and credit caused by delays beyond its control or for those delays caused by

tardy approvals of work in progress by various official agencies. The Director shall have the discretion to grant any requested extension. No additional compensation shall be allowed for such delays.

ARTICLE V - TERM

A. **Duration.** The initial term of this Agreement is one year from the Effective Date.

B. **Extension.** The City may extend this Agreement for up to four successive one-year periods pursuant to validly executed amendments, provided that: any extension of this Agreement shall be subject to and contingent upon the encumbrance of funds; the City determines that the extension facilitates the continuity of services provided under this Agreement; and the total duration of the Agreement, including the original term and any extensions, shall not exceed five years.

ARTICLE VI - COMPENSATION

The total maximum amount payable under this Agreement for Phase I(b) Services (Scoping) shall not exceed **SIXTY-TWO THOUSAND, ONE HUNDRED EIGHTY-SIX DOLLARS AND 16 CENTS (\$62,186.16).**

The total maximum aggregate amount payable for all basic services for Phases I(a), I(b), III, IV, and V(a) of the Project shall not exceed **ONE MILLION, ONE HUNDRED EIGHTY-ONE THOUSAND, FIVE HUNDRED THIRTY-SIX DOLLARS AND 95 CENTS (\$1,181,536.95).**

The maximum amount payable under this Agreement for additional H&H Modeling services, public meetings, and benefit cost analysis shall not exceed **ONE HUNDRED NINETY-SIX THOUSAND, NINE HUNDRED THIRTY-EIGHT DOLLARS AND 47 CENTS (\$196,938.47).**

The maximum amount due for Phase V(b). Resident Inspection Services (if requested) shall not exceed the hourly rate determined to be cost reasonable at a later date. The Topographic Survey and Geotechnical Testing shall not exceed a fixed fee determined to be cost reasonable at a later date.

The Consultant acknowledges and agrees that, unless otherwise provided by a validly executed amendment:

1. The City's officers and employees are not authorized to request or instruct the Consultant to perform any work beyond the scope or duration of this Agreement;
2. The City is not required to pay or reimburse the Consultant for any work or costs that are beyond the scope or duration of this Agreement; and
3. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

The compensation to be paid to the Consultant for services and reimbursable expenses under Phases I(b), III, IV & V(a) shall be as follows.

The fee for Basic Services shall be calculated as the product of the fee percentage, adjusted for inflation, and the amount Available For Construction (AFC), adjusted for inflation.

The fee percentage shall be computed by the following formula:

$$\text{FEE PERCENTAGE} = \frac{46.10}{\text{Log (AFC (1975 BCI/Current BCI))}}$$

The Consultant's fee shall be computed by the following formula:

$$\text{FEE} = \text{FEE PERCENTAGE (AFC(1975 BCI/Current BCI)(Current CPI/1975 CPI)}$$

Where "BCI" = Building Cost Index as published by Engineering News Record and "CPI" = Consumer Price Index as published by U.S. Department of Labor, Bureau of Labor Statistics.

Because the annual average computed in December of the BCI and CPI is used, fee calculations are based upon the most current calendar year average of both indices. Should fee modifications occur during the course of the project, the BCI and CPI index factors used to calculate the original fee shall be used. If a project, through no fault of the Consultant, is inactive for more than 24 months, the current BCI and CPI index factors shall be applied to the project once re-activated.

The City has evaluated the scope, function, complexity, image and context of the project, and due to the highly specialized design character and function requiring a high degree of design skill and requiring extensive, or special scientific, electronic, mechanical and electrical equipment and design expertise, this project is rated as "Complex" and therefore the Compensation is to be paid at a rate of 1.15 of Basic Compensation.

The Consultant's fee may be recalculated after actual construction cost has been established via competitive bid and at the completion of the project.

Routine change orders which involve a small amount of effort will not involve extra compensation. Before the Consultant prepares a change order for which it feels it is entitled to extra compensation due to the extra effort involved, it shall so notify the City in advance and secure the City's approval to proceed with the change order. When final payment is made to the Consultant, all such change orders will be reviewed by the City, and the Consultant's contract will be amended to reflect extra compensation for the change orders which the City has determined merit additional fee. The fee will be computed by increasing the contract award by the amount of change orders that qualify for additional fee as described above and recalculating the fee. Nothing herein shall require the Consultant to commence any services under a change order until the parties have reached a mutual written agreement.

The Consultant shall prepare change orders caused by errors or omissions of the Consultant without additional compensation.

1. The Consultant shall be financially responsible for costs that result from errors and/or omissions that exceed an acceptable level pursuant to the standard of care as described in Article 1, Section A. The Department shall participate in the cost of omissions to the extent of the value received by the Department.

Errors are changes to the work caused by the Consultant's negligence for which the Consultant is entitled to payment but for which the Department receives no value. Typically, these involve work that has been constructed and must be demolished and replaced.

Omissions are changes to the work caused by the Consultant for which the Consultant is entitled to payment for which the Department receives value. Typically these involve work that must be added to contract with little or no change to the work that has been constructed.

2. Preparation of documents required for change orders for any cause shall not be started without Department's prior approval.

The Consultant shall obtain one or more proposals from registered land surveyors and geotechnical engineers when required for the Project and prepare a recommendation to the Department for approval.

ARTICLE VII - INVOICES

The Consultant shall submit monthly invoices showing the percentage and dollar amount of the Services provided to date for such submission. The Consultant shall submit seven (7) invoices in a format approved by the Department shall be submitted to the Department along with three (3) sets of back-up or verification documentation and three (3) CDs/DVDs containing the electronic files of the invoices and back-up documentation.

ARTICLE VIII - TERMS AND CONDITIONS FOR FEMA HMGP COMPLIANCE

The Consultant is advised that this project is to be funded by FEMA HMGP. Notwithstanding any provision of the Agreement to the contrary, the following terms and conditions:

1. **Termination for Cause.** The City and the Consultant shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party of intent to terminate and the reasons thereof. If termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

2. **Termination for Convenience.** The City shall have the right to terminate this Agreement without cause by giving the Consultant written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event the City elects to terminate for convenience, the City shall be obligated to pay the Consultant only for those Services performed up to and through the date of termination.

3. **Records Retention and Access.**

- a. The Consultant shall grant the City, the State of Louisiana, FEMA HMGP, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the consultant which are pertinent to this contract for the purposes of making audit, examination, excerpts, and transcriptions.
- b. The Consultant shall retain all required records for three (3) years from the point the State of Louisiana or the City make final payments and all other pending matters related to the contract are closed.

4. **Compliance with Applicable Laws and Regulations.** As applicable, the Consultant shall comply with each the following, each of which is incorporated by reference:

- a. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60);
- b. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- c. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5);
- d. Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15);
- e. Mandatory standards and policies relating to the energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871); and
- f. Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

5. **Notices.** As applicable, the Consultant shall comply with each the following, as required by FEMA Uniform Administrative Requirements (44 CFR § 13.36(i)7-10):

- a. **Notice of Awarding Agency Requirements for Reporting.** The Consultant is subject to FEMA and/or GOHSEP reporting requirements regarding this Agreement.
- b. **Notice of Awarding Agency Requirements to Patent Rights and Inventions.** This Agreement may be subject to government unrestricted use or ownership.
- c. **Notice of Awarding Agency Requirements Pertaining to Copyrights and Data.** This Agreement may be subject to government unrestricted use.

6. **Remedies and Sanctions Against Consultant Default.** The City retains all rights and recourse under Louisiana law to enforce this Agreement or recover damages with any Consultant breach or violation hereof.

ARTICLE IX – INSURANCE

Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Consultant will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

A. Minimum Requirements:

i. **Commercial General Liability (CGL):** Including contractual liability insurance, products and completed operations, person injury, bodily injury, property damage, advertising injury, abuse and molestation, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an “occurrence” form. .

ii. **Workers’ Compensation:** as required by the State of Louisiana, with Statutory Limits and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

iii. **Professional (Errors and Omissions) Liability Insurance:** Insurance appropriate to the Contractor’s profession with limits of liability of not less than \$5,000,000 per occurrence or claim / \$5,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract.

The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. The Contractor shall ensure that coverage under this policy continues for a period of thirty-six months.

iv. **Automobile Liability Insurance:** Using Insurance Services Office (ISO) Form Number CA 00 01 or its substantial equivalent including liability coverage for all autos owned, rented, hired or borrowed as well as liability for mobile equipment subject to compulsory insurance or financial liability laws or other motor vehicle insurance laws with limits of not less than \$1,000,000 per accident for bodily injury or property damage. Policy to include the Broad Form Transportation Pollution Form CA 99 48, or most current form available.

v. **Umbrella Insurance:** Limits of liability excess of Employer’s Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance in the amount of not less than \$5,000,000.

B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

i. **Additional Insured Status.** The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all of the requirements stated herein.

The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.

The Additional Insured Box must be marked “Y” for Commercial General Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation /Employers Liability and Property

ii. **Primary Coverage.** For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non- contributing to the Contractor’s coverage.

iii. **Claims Made Policies.** If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement

iv. **Waiver of Subrogation.** The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.

v. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except with prior notice to the City of no less than 30 days.

vi. **Acceptability of Insurers.** Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

C. **Notice.** The Contractor will provide the City’s Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: CEA) within 10 calendar days of the Effective Date and at any other time at the City’s request the following documents:

i. Copies of all policies of insurance, including all policies, forms, and endorsements;

D. **Miscellaneous.** Without notice from the City, the Contractor will:

i. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;

ii. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.

ARTICLE X – INDEMNITY

A. **INDEMNITY:** To the fullest extent permitted by law, the Consultant will indemnify, defend, and hold the City, its officials, employees, and agents (the “**Indemnified Parties**”) harmless from and against: (1) any and all claims, demands, suits, judgments of sums of money to any party accruing against the City for loss of life or injury or damage to persons or property

growing out of, resulting from, or by reason of any act or omission or the operation of the Consultant or any of its subcontractors, or any of its or their agents, servants, employees, while engaged in or about or in connection with the discharge or performance of the services to be done or performed by the Consultant under this Agreement; and (2) any and all claims and/or liens for labor, services, or materials furnished to the Consultant in connection with the performance of its obligation under this Agreement.

B. LIMITATION: The Consultant's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Consultant nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

C. INDEPENDENT DUTY: The Consultant has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Consultant is ultimately absolved from liability.

D. EXPENSES: The Consultant will bear all expenses, including without limitation the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE XI – PERFORMANCE MEASURES

The City will measure the performance of the Consultant according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

If the Consultant fails to perform according to the Agreement, the City will notify the Consultant. If there is a continued lack of performance after notification, the City may declare the Consultant in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting Consultant for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting Consultant.

ARTICLE XII – INDEPENDENT CONTRACTOR STATUS

A. INDEPENDENT CONTRACTOR STATUS: The Consultant is an independent contractor and will not be deemed an employee, servant, agent, partner, or joint venturer of the

City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. EXCLUSION OF WORKERS' COMPENSATION COVERAGE: The City will not be liable to the Consultant, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Consultant will not be considered an employee of the City for any reason, including for the purpose of Worker's Compensation coverage.

C. EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE: The Consultant, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Consultant nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Consultant has been and will be free from any control or direction by the City over the performance of the services covered by this Agreement; (b) the services to be performed by the Consultant are outside the normal course and scope of the City's usual business; and (c) the Consultant has been independently engaged in performing the services required under this Agreement prior to the effective date of this Agreement.

D. WAIVER OF BENEFITS: The Consultant, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XIII - NOTICE

1. Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or by certified mail, return receipt requested as follows:

To the City: Director, Project Delivery Unit
 City of New Orleans
 1300 Perdido Street, Suite 6W03
 New Orleans, LA 70112
 &
 City Attorney
 City of New Orleans
 1300 Perdido Street, Suite 5E03
 New Orleans, LA 70112

To the Consultant: Robert Mora, Managing Partner
 Batture, LLC
 500 Crystal St.
 New Orleans, LA 70124

2. Notices shall be effective when received, except any notice that is not received due

to the intended recipient's unjustified refusal or avoidance of delivery shall be deemed received as of the date of the first attempted delivery. Each party shall be responsible for notifying the other in writing that references this Agreement of any changes in the respective addresses set forth above.

3. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and the Consultant.

ARTICLE XIV – NON-DISCRIMINATION

A. EQUAL EMPLOYMENT OPPORTUNITY: In all hiring or employment made possible by, or resulting from this Agreement, the Engineer (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Engineer's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. The Engineer will require all subConsultants to comply with the requirements of this article.

B. NON – DISCRIMINATION: In the performance of this Agreement, Engineer will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with Engineer in any of Engineer's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Engineer. Engineer agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

ARTICLE XV –DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM

A. In General. The Consultant agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity (“OSD”) oversees the DBE Program and assigns a DBE Compliance Officer (“DBECO”) to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Consultant's use of DBE subConsultants/suppliers ("DBE Entities") through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subConsultants;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Consultant or DBE Entities.

C. Cooperation. The Consultant shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Consultant's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Consultant shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Consultant.
 - b. The Consultant shall agree to promptly pay subConsultants, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;
 - b. Documentation of payments and other transactions with DBE Entities;
 - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Consultant does not use in accordance with the approved DBE participation submission;
 - d. Any other records required by the OSD.

The Consultant is required to maintain such records for 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.
 - a. The Consultant shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Consultant. Thereafter, "DBE Utilization" reports

shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.

- b. Reports are required even when no activity has occurred in a monthly period.
 - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - d. The Consultant may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.
- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

- a. for a reason beyond the Consultant's control, the Consultant is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Consultant must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Consultant shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subConsultants during the performance of the Agreement; or
- b. the Consultant reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Consultant shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

ARTICLE XVI – MISCELLANEOUS PROVISIONS

1. Ownership of Documents.

All data collected by the Consultant and all documents, notes, drawings, tracings, and files collected or prepared for the project, except the Consultant's personnel and administrative files, shall upon payment therefore become and be the property of the City and the City shall not be restricted in any way whatsoever in the use of such material for the specific purpose and place intended; provided, however, that any use except for the specific purpose and place intended will be without liability or legal exposure to the Consultant.

Notwithstanding anything to the contrary contained herein, any tools, systems or information used by the Consultant to provide the Services hereunder, including computer software (object code and source code), know-how, methodologies, equipment or processes and the intellectual property inherent therein and appurtenant thereto, shall remain the sole and exclusive property of the Consultant or its suppliers.

The Consultant makes no representations as to the compatibility of files and deliverables with the City's hardware and/or software configurations unless specifically set forth in this Agreement. Because data stored on electronic media can deteriorate undetected or be modified, the Consultant shall not be held liable for the completeness or accuracy of the electronic data after the acceptance by the City. Only the submitted hard copy documents with the Consultant's seal on them will be considered instruments of service hereunder. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

2. **City's Right to Approve Personnel.** The City reserves the right to approve or reasonably disapprove all engineers, workers, and other field personnel assigned to the project.
3. **Limitations of the City's Obligations.** The City has no obligations not explicitly set forth in this Agreement.
4. **Remedies Cumulative.** No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate, and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.
5. **Survival of Provisions.** All representations and warranties and all responsibilities regarding record retention, access, and ownership, cooperation with Office of Inspector General investigations, and indemnification shall survive the termination of this Agreement and continue in full force and effect thereafter.
6. **Assignability.** The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of the City.
7. **Jurisdiction.** The Consultant hereby consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans, and does hereby formally waive any pleas of jurisdiction on account of the residence elsewhere of the Consultant.
8. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.
9. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default, or breach shall not affect, nor constitute a waiver of, any party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that

default or breach or any prior, contemporaneous, or subsequent default or breach.

10. **Severability.** The parties hereto intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, should a court of competent jurisdiction find any provision to be unenforceable as written, the parties intend and desire that the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If, however, the court should find such provision to be illegal and not subject to reformation, such provision shall be fully severable. In such event, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision was never a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect.

11. **Rules of Construction.** The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. The singular number includes the plural, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of or against the City or the Consultant on the basis of which party drafted the uncertain or ambiguous language. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties.

12. **No Third-Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the parties, and the parties expressly disclaim any intent to benefit anyone not a party hereto.

13. **Non-Exclusivity for the City.** The City shall be free to engage the services of other Consultants for the provision of some or all of the services set forth in this Agreement.

14. **Conflict of Interest.** In the interest of ensuring that efforts of the Consultant do not conflict with the interests of the City, and in recognition of the Consultant's responsibility to the City, the Consultant agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Consultant. It is incumbent upon the Consultant to notify the City and provide full disclosure of the possible effects of such employment on the Consultant's independent work on behalf of the City. Final decision on any disputed offers of other employment for the Consultant shall rest with the City.

15. **Prohibition Against Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this Section, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Consultant, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Consultant pursuant to this Agreement without regard to the Consultant's satisfactory performance of such Services.

16. **Ownership Interest Disclosure.** The Consultant shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Consultant and stating that no other person holds an ownership interest in the Consultant via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a

publicly traded corporation. If the Consultant fails to submit the required affidavits, the City may, after 30 days' written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

17. **Sub-Consultant Reporting.** The Consultant shall provide a list of all persons, natural or artificial, who are retained by the Consultant at the time of the Agreement's execution and who are expected to perform work as sub-Consultants in connection with the Consultant's work for the city. In regard to any sub-Consultant proposed to be retained by the Consultant to perform work on the Agreement with the City, the Consultant must provide notice to the City within 30 days of retaining said sub-Consultant. If the Consultant fails to submit the required lists and notices, the City may, after 30 days' written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payments until such the required lists and notices are submitted.

18. **Amendments.** This Agreement shall not be modified except by written amendment executed by authorized representatives of the parties.

19. **Complete Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

[SIGNATURES ARE ON THE NEXT PAGE]

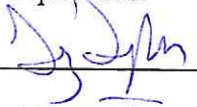
IN WITNESS WHEREOF the City and the Consultant, through their duly authorized representatives, make and execute this Agreement as of the Effective Date.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 14th day of November, 2019.

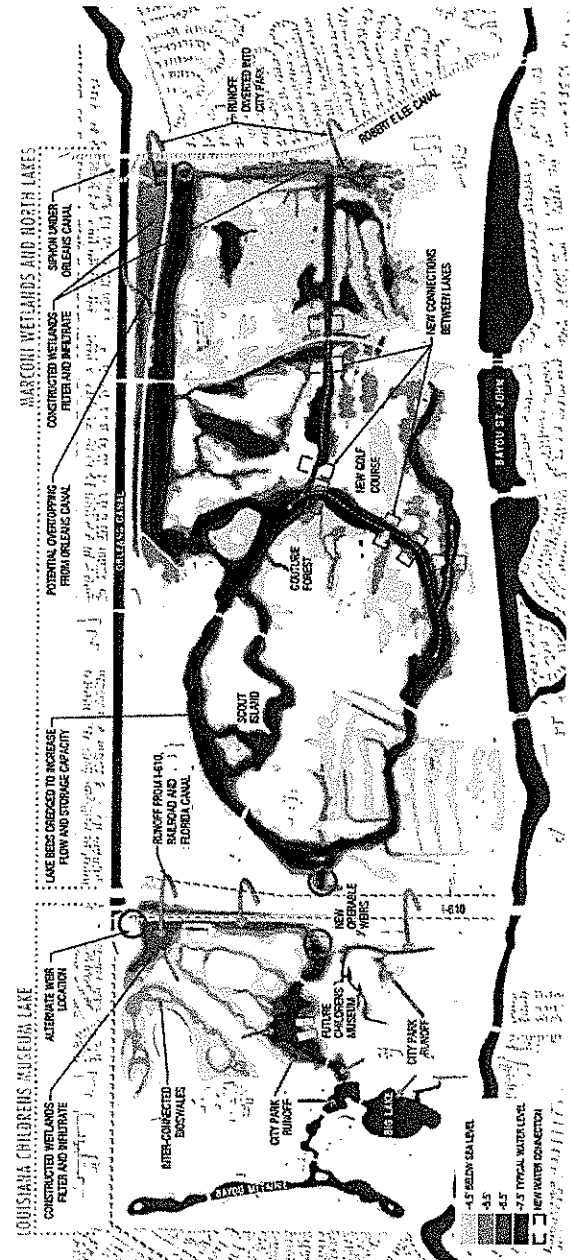
FORM AND LEGALITY APPROVED:
Law Department

By: 
Printed Name: Tracy Tyler

BATTURE, LLC

BY: 
ROBERT MORA, MANAGING PARTNER
46-5677826
CORPORATE TAX I.D.

HAZARD MITIGATION GRANT PROPOSALS FOR NEW ORLEANS CITY PARK



PROJECT AREA MAP